

among two or more constituent units within the Department of the Treasury, or within offices of the United States Customs Service (other than the legal staff or Office of Congressional & Public Affairs) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under the Freedom of Information Act, as amended (5 U.S.C. 552), do not constitute a basis for an extension under this paragraph.

(b) *Extension by judicial review.* If the United States Customs Service fails to comply with the time limitations specified in §§103.6 and 103.7 and the requester commences an action under §103.9, the court in which the suit was initiated may retain jurisdiction and allow the United States Customs Service additional time to review its records, if the Customs Service shows the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

[T.D. 81-168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981, as amended by T.D. 91-77, 56 FR 46114, Sept. 10, 1991]

#### § 103.9 Judicial review.

(a) *Failure to comply with time limitations.* If the United States Customs Service fails to comply with the time limitations specified in §§103.6, 103.7 or §103.8, a requester is considered to have exhausted the administrative remedies with respect to the request.

(b) *Procedure of initiating judicial review.* If a request for records is denied upon appeal pursuant to §103.7, or if no determination is made within the 10-day or 20-day periods specified in §§103.6 and 103.7, respectively, together with an extension pursuant to §103.8(a) or by agreement of the requester, the requester may commence an action under 5 U.S.C. 552(a)(4)(B) in a United States district court in the district (1) in which the requester resides, (2) in which the requester's principal place of business is located, (3) in which the records are situated, or (4) in the District of Columbia. Service of process in that action is governed by the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. The Chief Counsel, United States Customs Serv-

ice, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 is the officer designated to receive any service of process.

(c) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that the Customs officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. The Special Counsel, after investigation and consideration of the evidence submitted, submits its findings and recommendations to the Commissioner of Customs and the Secretary of the Treasury. The Special Counsel also sends copies of the findings and recommendations to the officer or employee or the representative of that officer or employee.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

#### § 103.10 Fees for services.

(a) *In general.* (1) The fees prescribed in this section are for search and duplication and under no circumstances is there a fee for determining whether an exemption can or should be asserted, for deleting exempt matter being withheld from records to be furnished, or for monitoring a requester's inspection of records made available in this manner.

(2) Customs publications which are available for sale through the Government Printing Office are on the shelves of the reading rooms and similar public inspection facilities, but those publications are not available for sale at those facilities. Those publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, pages from those publications may be copied at the public inspection facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* Unless charges are inapplicable, or are waived or reduced in accordance with paragraph (c) or (d)